

1 Daniel R. Salas, Esq. (Cal. State Bar No. 67389)  
2 401 West A Street, Suite 2220  
3 San Diego, California 92101  
4 Telephone: (619) 230-0900  
5 Facsimile: (619) 230-0995  
6 Email: [dan@dansalas.com](mailto:dan@dansalas.com)

7 Attorney for Defendant  
8 Luxemont, LLC

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SILVERTIP PARTNERS, LLC, a  
12 Delaware Limited Liability Company,

13 Plaintiff,

14 v.

15 LUXEMONT, LLC, a California  
16 Limited Liability Company, and  
17 Does 1–10, Inclusive,

18 Defendants.

Case No.: 14CV2010 BTM DHB

**ANSWER TO COMPLAINT**

Case Filed: August 27, 2014

19 Defendant LUXEMONT, LLC (“Defendant”), answering the Complaint  
20 filed by Plaintiff SILVERTIP PARTNERS, LLC (“Plaintiff”), admits, denies and  
21 alleges as follows:

22 **INTRODUCTION**

23 1. Defendant is without information or belief sufficient to admit or deny  
24 the allegations of Paragraph 1 of the Complaint, each of which it denies on that  
25 basis.  
26

27 2. Answering Paragraph 2 of the Complaint, Defendant admits it owns  
28

1 and operates a website known as www.justlux.com. Defendant admits it  
2 displayed a photographic image on its website, to which Plaintiff claims rights  
3 (“the Image”). Except as expressly admitted herein, Defendant denies each and  
4 every remaining allegation of Paragraph 2 of the Complaint.  
5

### 6 **JURISDICTION AND VENUE**

7  
8 3. Answering Paragraph 3 of the Complaint, Defendant admits this Court  
9 has subject matter jurisdiction over the claims for copyright infringement made by  
10 the Complaint, and pendent jurisdiction over the state law claim made by the Fifth  
11 Count of the Complaint.  
12

13  
14 4. Answering Paragraph 4 of the Complaint, Defendant admits this Court  
15 is the proper venue for this action, so long as the federal claims asserted by it exist.  
16 Except as expressly admitted herein, Defendant denies each and every remaining  
17 allegation of Paragraph 4, and expressly denies that Plaintiff has suffered any  
18 damages whatsoever.  
19

20  
21 5. Answering Paragraph 5 of the Complaint, Defendant admits this Court  
22 has personal jurisdiction over it because its principal place of business is within the  
23 geographic boundaries of the Court’s jurisdiction.  
24

### 25 **PARTIES**

26  
27 6. Defendant is without information or belief sufficient to admit or deny  
28 the allegations of Paragraph 6 of the Complaint, each of which it denies on that

1 basis.

2 7. Defendant admits the allegations of Paragraph 7 of the Complaint.

3  
4 8. Defendant is without information or belief sufficient to admit or deny  
5 the allegations of Paragraph 8 of the Complaint, each of which it denies on that  
6 basis.  
7

8 9. Defendant denies the allegation of Paragraph 9 of the Complaint that  
9 Defendant is liable and/or responsible as alleged by the Complaint. Defendant is  
10 without information or belief sufficient to admit or deny the remaining allegations  
11 of Paragraph 9 of the Complaint, each of which it denies on that basis.  
12

13  
14 10. Defendant is without information or belief sufficient to admit or deny  
15 the allegations of Paragraph 10 of the Complaint, each of which it denies on that  
16 basis.  
17

18 **FACTUAL ALLEGATIONS**

19 11. Defendant is without information or belief sufficient to admit or deny  
20 the allegations of Paragraph 11 of the Complaint, each of which it denies on that  
21 basis.  
22

23 12. Defendant is without information or belief sufficient to admit or deny  
24 the allegations of Paragraph 12 of the Complaint, each of which it denies on that  
25 basis.  
26

27 13. Defendant is without information or belief sufficient to admit or deny  
28

1 the allegations of Paragraph 13 of the Complaint, each of which it denies on that  
2 basis.

3  
4 14. Defendant is without information or belief sufficient to admit or deny  
5 the allegations of Paragraph 14 of the Complaint, each of which it denies on that  
6 basis.

7  
8 15. Defendant is without information or belief sufficient to admit or deny  
9 the allegations of Paragraph 15 of the Complaint, each of which it denies on that  
10 basis.

11  
12 16. Answering Paragraph 16 of the Complaint, Defendant admits it is the  
13 registered owner of its website and is responsible for its content. Defendant is  
14 without information or belief sufficient to admit or deny the remaining allegations  
15 of Paragraph 16, each of which it denies on that basis.

16  
17  
18 17. Answering Paragraph 17 of the Complaint, Defendant is without  
19 information or belief sufficient to admit or deny when Plaintiff discovered that the  
20 Image was accessible through Defendant's website, which it denies on that basis.  
21 Defendant admits the Image was stored and contained on its server. Except as  
22 expressly admitted herein, Defendant denies each and every remaining allegation  
23 of Paragraph 17 of the Complaint.

24  
25  
26 18. Answering Paragraph 18 of the Complaint, Defendant admits that on  
27 or about May 6, 2013, and not before then, an attorney for Plaintiff notified  
28

1 Defendant that the display of the Image on its website infringed Plaintiff's alleged  
2 copyright. Defendant denies that such notification gave Defendant the option to  
3 either enter into a licensing agreement or immediately remove the Image from  
4 Defendant's website. Instead, the notice demanded money as alleged damages.  
5 However, after receiving the notification, Defendant immediately removed the  
6 Image from its website and notified Plaintiff's attorney of such removal. Except as  
7 expressly admitted or denied herein, Defendant denies each and every remaining  
8 allegation of Paragraph 18 of the Complaint.  
9

12 19. Answering Paragraph 19 of the Complaint, Defendant denies that it  
13 was notified by Plaintiff of an alleged improper use of its image prior to May 6,  
14 2013, or that it ignored the notification it received at that time. Defendant alleges  
15 that promptly after receiving notification from Plaintiff's attorney on or about May  
16 6, 2013, it removed the image from its website; that it notified Plaintiff's attorney  
17 of such removal; and that Plaintiff's attorney acknowledged the removal.  
18 Defendant admits that it has subsequently received demands from an attorney for  
19 Plaintiff that it pay an exorbitant sum of money to Plaintiff, and that Defendant has  
20 responded to those demands by, among other things, denying any liability to  
21 Plaintiff. Except as expressly admitted or denied herein, Defendant denies each  
22 and every remaining allegation of Paragraph 19 of the Complaint.  
23  
24  
25  
26  
27

28 20. Defendants deny each and every allegation of Paragraph 20 of the

1 Complaint.

2 21. Answering Paragraph 21 of the Complaint, Defendant alleges that its  
3 website provides local news reporting within the city guide sections thereof to  
4 inform users of current newsworthy events of interest, using information obtained  
5 from RSS feeds from trusted news sources. The Image was obtained by Defendant  
6 from the RSS (Really Simple Syndication) news feed of Huffington Post in early  
7 August, 2012, prior to the time the Complaint alleges Plaintiff copyrighted it. That  
8 section of Defendant's website is to provide news reporting; it is not intended to  
9 generate revenues. No revenue was generated as a result of Defendant's display of  
10 the Image. Except as expressly admitted herein, Defendant denies each and every  
11 allegation of Paragraph 21 of the Complaint.

12 22. Answering Paragraph 22 of the Complaint, Defendant admits it  
13 displayed the Image on its website. Defendant alleges its source of the Image was  
14 an RSS news feed from a trusted source, to wit: Huffington Post, which registered  
15 AP as the source of the Image. Defendant received the RSS feed and the Image  
16 from Huffington Post before it was allegedly copyrighted by Plaintiff. Except as  
17 expressly admitted or denied herein, Defendant denies each and every allegation of  
18 Paragraph 22 of the Complaint.

19 23. Defendant denies each and every allegation of Paragraph 23 of the  
20 Complaint.

24. Defendant denies each and every allegation of Paragraph 24 of the Complaint.

25. Defendant denies each and every allegation of Paragraph 25 of the Complaint.

26. Defendant denies each and every allegation of Paragraph 26 of the Complaint.

27. Defendant denies each and every allegation of Paragraph 27 of the Complaint.

## FIRST COUNT

*(Direct Copyright Infringement – 17 U.S.C. §501 et seq.)*

28. Answering Paragraph 28 of the Complaint, Defendant refers to and incorporates by reference herein each of the admissions, denials and allegations set forth in Paragraphs 1 through 27, inclusive, above.

29. Defendant is without information or belief sufficient to admit or deny the allegations of Paragraph 29 of the Complaint, which it denies on that basis.

30. Answering Paragraph 30 of the Complaint, Defendant admits that Plaintiff did not expressly license Defendant's use of the Image or expressly assign any rights therein to Defendant. Except as admitted herein, Defendant denies each and every remaining allegation of Paragraph 30 of the Complaint.

31. Defendant denies each and every allegation of Paragraph 31 of the

1 Complaint.

2 32. Defendant denies each and every allegation of Paragraph 32 of the  
3  
4 Complaint.

5 33. Defendant denies each and every allegation of Paragraph 33 of the  
6  
7 Complaint, and further alleges that only two (2) visitors to Defendant's website  
8 accessed the page where the Image was displayed.

9 34. Answering Paragraph 34 of the Complaint, Defendant admits it had  
10  
11 the ability to, and alleges it did, promptly remove the display of the Image from its  
12  
13 website after being notified of Plaintiff's claim. Except as expressly admitted  
14  
15 herein, Defendant denies each and every remaining allegation of Paragraph 34 of  
16 the Complaint.

17 35. Defendant denies each and every allegation of Paragraph 35 of the  
18  
19 Complaint, and expressly denies that Plaintiff has been harmed in any amount  
20 whatsoever.

21 **SECOND COUNT**

22 ***(Vicarious Copyright Infringement)***

23 36. Answering Paragraph 36 of the Complaint, Defendant refers to and  
24  
25 incorporates by reference herein each of the admissions, denials and allegations set  
26  
27 forth in Paragraphs 1 through 35, inclusive, above.

28 37. Defendant denies each and every allegation of Paragraph 37 of the

1 Complaint.

2 38 Defendant denies each and every allegation of Paragraph 38 of the  
3  
4 Complaint.

5 39. Defendant denies each and every allegation of Paragraph 39 of the  
6  
7 Complaint, and expressly denies that Plaintiff has been harmed in any amount  
8 whatsoever.

9  
10 **THIRD COUNT**

11 ***(Inducement of Copyright Infringement)***

12 40. Answering Paragraph 40 of the Complaint, Defendant refers to and  
13  
14 incorporates by reference herein each of the admissions, denials and allegations set  
15 forth in Paragraphs 1 through 39, inclusive, above.

16 41. Defendant denies each and every allegation of Paragraph 41 of the  
17  
18 Complaint.

19 42. Defendant denies each and every allegation of Paragraph 42 of the  
20  
21 Complaint.

22 43. Defendant denies each and every allegation of Paragraph 43 of the  
23  
24 Complaint, and expressly denies that Plaintiff has been harmed in any amount  
25 whatsoever.

26 44. Defendant denies each and every allegation of Paragraph 44 of the  
27  
28 Complaint, and expressly denies that Plaintiff has been harmed in any amount

1 whatsoever.

2 **FOURTH COUNT**

3  
4 ***(Violation of the Digital Millennium Copyright Act – 17 U.S.C. §§1202(a) & (b))***

5 45. Answering Paragraph 45 of the Complaint, Defendant refers to and  
6 incorporates by reference herein each of the admissions, denials and allegations set  
7 forth in Paragraphs 1 through 44, inclusive, above.

8  
9 46. Defendants deny each and every allegation of Paragraph 46 of the  
10 Complaint.

11  
12 47. To the extent the allegations of Paragraph 47 of the Complaint assert  
13 conclusions of law, Defendant is not required to plead in response thereto. To the  
14 extent the allegations of Paragraph 47 of the Complaint are allegations of fact,  
15 Defendants deny each and every allegation thereof.

16  
17 48. Defendant denies each and every allegation of Paragraph 48 of the  
18 Complaint, and expressly denies that Plaintiff has been harmed in any amount  
19 whatsoever.

20  
21  
22 **FIFTH COUNT**

23 ***(Unlawful Business Practices California B & P Code §17200 et seq.)***

24  
25 49. Answering Paragraph 49 of the Complaint, Defendant refers to and  
26 incorporates by reference herein each of the admissions, denials and allegations set  
27 forth in Paragraphs 1 through 48, inclusive, above.

50. Defendant denies each and every allegation of Paragraph 50 of the Complaint.

51. To the extent the allegations of Paragraph 51 of the Complaint assert conclusions of law, Defendant is not required to plead in response thereto. To the extent the allegations of Paragraph 51 of the Complaint are allegations of fact, Defendant is without information or belief sufficient to admit or deny whether Plaintiff is the sole owner of all right, title and interest in the Image, which it denies on that basis. Defendant denies each and every remaining allegation of Paragraph 51 of the Complaint.

52. Defendant denies each and every allegation of Paragraph 52 of the Complaint.

53. Defendant denies each and every allegation of Paragraph 53 of the Complaint.

54. Defendant denies each and every allegation of Paragraph 54 of the Complaint.

55. Defendant denies each and every allegation of Paragraph 55 of the Complaint.

## SIXTH COUNT

*(Attorney Fees and Costs Pursuant to 17 U.S.C. §505)*

56. Answering Paragraph 56 of the Complaint, Defendant refers to and

1 incorporates by reference herein each of the admissions, denials and allegations set  
2 forth in Paragraphs 1 through 55, inclusive, above.

3  
4 57. Defendant denies that Plaintiff is entitled to an award of attorney's  
5 fees and costs in any amount whatsoever for the prosecution of this meritless  
6 action.  
7

### 8 **DEFENSES**

9 To the extent that it is Plaintiff's burden to prove any of the issues raised in  
10 the defenses set forth below, Defendant hereby preserves and does not waive its  
11 legal position that the Plaintiff maintains the burden of proof on those issues.  
12 Defendant reserves the right to amend this answer to assert such additional  
13 defenses as may later become available or apparent to it.  
14  
15

#### 16 **FIRST AFFIRMATIVE DEFENSE**

##### 17 *(Failure to State a Claim for Relief)*

18 The Complaint fails to state a claim upon which relief can be granted.  
19  
20

#### 21 **SECOND AFFIRMATIVE DEFENSE**

##### 22 *(Standing)*

23 Defendant is informed and believes, and thereon alleges, that Plaintiff is  
24 without standing to prosecute this action.  
25

26 ///  
27  
28

1                                   **THIRD AFFIRMATIVE DEFENSE**

2   *(Non-Infringement)*

3  
4           Plaintiff's claims for copyright infringement are barred because the subject  
5 image was hosted on third party websites not affiliated with or controlled by  
6 Defendant, and was visible to visitors to Defendant's website (www.justluxe.com)  
7  
8 only through RSS links created by a third party and fed onto www.justluxe.com.

9                                   **FOURTH AFFIRMATIVE DEFENSE**

10   *(Innocent Intent)*

11  
12           Plaintiff's recovery of any damages it suffered are barred or limited by  
13 Defendant's innocent intent.  
14

15                                   **FIFTH AFFIRMATIVE DEFENSE**

16   *(Injury Caused by Others)*

17  
18           Plaintiff's claims are barred, in whole or in part, because any damages  
19 allegedly suffered by Plaintiff were either wholly or partially the legal fault of  
20 persons, firms, corporations, or entities other than Defendant.  
21

22                                   **SIXTH AFFIRMATIVE DEFENSE**

23   *(Lack of Volitional Act)*

24  
25           Plaintiff's claims are barred, in whole or in part, because the alleged  
26 infringement was not caused by a volitional act attributable to Defendant.  
27  
28

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 *(No Damages)*

3  
4 Plaintiff did not incur any damages or loss as a result of any act or conduct  
5 by Defendant, and any alleged damages are too speculative and imprecise to  
6 support an award in Plaintiff's favor.  
7

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 *(Failure to Mitigate)*

10  
11 Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to  
12 mitigate its damages, if any.  
13

14 **NINTH AFFIRMATIVE DEFENSE**

15 *(Lack of Willfulness)*

16 Defendant's actions were not willful.  
17

18 **TENTH AFFIRMATIVE DEFENSE**

19 *(No Copyright)*

20  
21 Defendant is informed and believes, and thereon alleges, that Plaintiff had  
22 not copyrighted the Image when Defendant received it via an RSS feed.  
23

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 *(Copyright Misuse)*

26 Plaintiff's claims are barred, in whole or in part, by the doctrine of copyright  
27 misuse.  
28

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 *(Abandonment)*

3  
4 Plaintiff's claims are barred, in whole or in part, by the doctrine of  
5 abandonment of copyright.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7  
8 *(Fair Use)*

9  
10 Plaintiff's claims are barred, in whole or in part, by the doctrine of fair use.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 *(First Sale)*

13  
14 Plaintiff's claims are barred, in whole or in part, by the first-sale doctrine.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 *(First Amendment)*

17  
18 Plaintiff's claims are barred, in whole or in part, to the extent Defendant's  
19 actions and speech are protected by the First Amendment to the Constitution of the  
20 United States.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 *(No Secondary Liability)*

23  
24  
25 Plaintiff's claims are barred, in whole or in part, because any liability arises  
26 from the conduct of parties other than Defendant, for which Defendant cannot be  
27 held directly or indirectly liable.  
28

1                                   **SEVENTEENTH AFFIRMATIVE DEFENSE**

2   *(Lack of Knowledge)*

3  
4           Defendant cannot be held secondarily liable for alleged copyright  
5 infringement because Defendant did not have the requisite knowledge of any  
6  
7 alleged primary infringement by a third party, or induce any alleged primary  
8 infringement by a third party.

9                                   **EIGHTEENTH AFFIRMATIVE DEFENSE**

10   *(No Right or Ability to Control)*

11  
12           Defendant cannot be held secondarily liable for alleged copyright  
13 infringement because Defendant did not have the right or ability to control any  
14  
15 alleged primary infringement by a third party.

16                                   **NINETEENTH AFFIRMATIVE DEFENSE**

17   *(Implied License)*

18  
19           Plaintiff's claims are barred by the doctrine of implied license.

20                                   **TWENTIETH AFFIRMATIVE DEFENSE**

21   *(DMCA)*

22  
23           Plaintiff's claims for damages for copyright infringement are barred  
24  
25 pursuant to the terms of the Digital Millennium Copyright Act, 17 U.S.C. §512.

26           ///

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

*(Estoppel)*

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

*(Unclean Hands)*

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

*(Laches)*

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**RELIEF REQUESTED**

**WHEREFORE**, Defendant prays for judgment against Plaintiff herein as follows:

1. That Plaintiff take nothing by its Complaint;
2. That the Complaint be dismissed in its entirety and with prejudice;
3. That Defendant be awarded its attorney's fees against Plaintiff;
4. For costs of suit herein;
5. For such other and further relief as the court deems just and proper.

Dated: September 18, 2014

s/ Daniel R. Salas  
Attorney for Defendant  
LUXEMONT, LLC  
E-mail: dan@dansalas.com

**PROOF OF SERVICE**

I, DANIEL R. SALAS, declare:

I am counsel of record herein for defendant Luxemont, LLC, a citizen of the United States, over the age of 18 and not a party to this action.

On September 18, 2014, I caused the attached Answer to Complaint to be served on the parties or their attorneys of record in this action via CM/ECF Notice of Electronic Filing. I electronically filed the document with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF user will be served by the CM/ECF system, including Aubrey A. Haddach, Esq., plaintiff's counsel, at aubrey@thehaddachlawoffice.com.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 18<sup>th</sup> day of September, 2014, at San Diego, California.

s/Daniel R. Salas

E-mail: dan@dansalas.com